

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOTICOL CHASTANG,

Petitioner,

vs.

T. VARGA, Warden,

Respondent.

No. C 12-1166 JSW (PR)

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO PROCEED IN
FORMA PAUPERIS**

(Docket No. 6)

INTRODUCTION

Petitioner is a California prisoner proceeding pro se, and he has filed a pro se habeas corpus petition pursuant to 28 U.S.C. § 2254. He has applied for leave to proceed in forma pauperis. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

Petitioner was convicted in Alameda County Superior Court after pleading nolo contendere to counts of carjacking and the use of a firearm. He did not appeal his conviction. He filed habeas petitions in all three levels of the California courts, and the petitions were denied.

DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a

1 person in custody pursuant to the judgment of a State court only on the ground that he is
 2 in custody in violation of the Constitution or laws or treaties of the United States.” 28
 3 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to
 4 show cause why the writ should not be granted, unless it appears from the application that
 5 the applicant or person detained is not entitled thereto.” *Id.* § 2243.

6 II Legal Claims

7 As grounds for federal habeas relief, Petitioner claims: (1) he received ineffective
 8 assistance of counsel; (2) exculpatory evidence was kept from him by his attorney, the
 9 trial court, and the prosecutor; and (3) his sentence included an enhancement for the use
 10 of a gun that was not proven to a jury beyond a reasonable doubt, in violation of his right
 11 to a jury. Petitioner’s claims are sufficient to warrant a response from Respondent.

12 CONCLUSION

13 For the foregoing reasons and for good cause shown,

14 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
 15 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General
 16 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

17 2. Respondent shall file with the Court and serve on Petitioner, within **ninety (90)**
 18 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
 19 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
 20 not be granted based upon the claims found cognizable above. Respondent shall file with
 21 the answer and serve on Petitioner a copy of all portions of the state trial record that have
 22 been transcribed previously and that are relevant to a determination of the issues presented
 23 by the petition. If Petitioner wishes to respond to the answer, he shall do so by filing a
 24 traverse with the Court and serving it on Respondent within **thirty (30)** days of the date
 25 the answer is filed.

26 3. Respondent may, within **ninety (90) days**, file a motion to dismiss on
 27 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to
 28


1 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,
2 Petitioner shall file with the Court and serve on Respondent an opposition or statement of
3 non-opposition within **thirty (30)** days of the date the motion is filed, and Respondent
4 shall file with the Court and serve on Petitioner a reply within **fifteen (15)** days of the date
5 any opposition is filed.

6 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
7 the Court informed of any change of address by filing a separate paper captioned "Notice
8 of Change of Address." He must comply with the Court's orders in a timely fashion.
9 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
10 to Federal Rule of Civil Procedure 41(b).

11 5. The application to proceed in forma pauperis (docket number 5) is GRANTED
12 in light of Petitioner's lack of funds.

13 IT IS SO ORDERED.

14 DATED: June 5, 2012

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16 JEFFREY S. WHITE
17 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LOTICOL KIRK CHASTANG,
Plaintiff,

Case Number: CV12-01166 JSW

CERTIFICATE OF SERVICE

v.

T. VIRGA et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 5, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Loticol Kirk Chastang F41212
CSP Sacramento
C6-110
P.O. Box 290066
Represa, CA 95671

Dated: June 5, 2012



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk